

No. 45337-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

A.W.

and STATE OF WASHINGTON,

Petitioners,

vs.

Dwight Finch,

Respondent.

Wahkiakum County Superior Court Cause No. 11-8-00005-3

The Honorable Judge Michael Sullivan

Appellant's Reply Brief

Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Attorneys for Appellant

BACKLUND & MISTRY

P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT.....	1
I. Finch lacks standing in A.W.’s juvenile case.....	1
II. Finch has no right to intervene or be heard in A.W.’s juvenile case.	1
III. The trial court exceeded its authority by ordering a polygraph in this case.	2
IV. A.W. adopts and incorporates the arguments set forth in the state’s Reply Brief.	3
CONCLUSION	3

TABLE OF AUTHORITIES

FEDERAL CASES

Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991) .. 1

WASHINGTON STATE CASES

In re Det. of Reyes, --- Wn. App. ----, 309 P.3d 745 (2013)..... 1

In re Pullman, 167 Wn.2d 205, 218 P.3d 913 (2009)..... 1

State v. Bianchi, 92 Wn.2d 91, 593 P.2d 1330 (1979)..... 1

WASHINGTON STATUTES

RCW 13.40 2

RCW 7.69.010 2

RCW 7.69.030 2

OTHER AUTHORITIES

CR 24 1

JuCR 1.4..... 1

RAP 10.1..... 3

ARGUMENT

I. FINCH LACKS STANDING IN A.W.'S JUVENILE CASE.

A person must have standing to pursue affirmative relief in court. *In re Det. of Reyes*, --- Wn. App. ----, ___, 309 P.3d 745 (2013). Finch does not have standing in this case. *Id.*; *Powers v. Ohio*, 499 U.S. 400, 410–11, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991)).

Finch does not address A.W.'s arguments regarding standing. *See* Appellant's Amended Opening Brief, pp. 3-5; Brief of Respondent. Finch's failure to address this issue may be treated as a concession. *In re Pullman*, 167 Wn.2d 205, 212 n.4, 218 P.3d 913 (2009).

For the reasons set forth in Appellant's Opening Brief, the Court of Appeals must reverse the lower court's order.

II. FINCH HAS NO RIGHT TO INTERVENE OR BE HEARD IN A.W.'S JUVENILE CASE.

A court may not permit third parties to intervene in criminal proceedings. *State v. Bianchi*, 92 Wn.2d 91, 92, 593 P.2d 1330 (1979).¹ Finch erroneously claims that CR 24 permits intervention here. Brief of Respondent, pp. 8-17. This is incorrect. CR 24 does not apply to juvenile prosecutions. JuCR 1.4(a).

¹ Exceptions to the *Bianchi* rule do not apply in this case. *See* Appellant's Opening Brief, p. 6 n. 3.

Likewise without merit is Finch's assertion that he has rights in this case conferred by RCW 7.69.030. Brief of Respondent, pp. 8-17. The legislature did not confer on crime victims the right to participate in cases wholly unrelated to the offenses against them. *See* RCW 7.69.010.

A.W.'s prosecution does not relate to an offense even tangentially related to Finch. RCW 7.69.030 should not be read to permit his intervention, based solely on his assertion that A.W. victimized him in a completely unrelated matter.²

The lower court's order must be reversed. A.W. should be permitted to complete his SSODA without Finch's interference.

III. THE TRIAL COURT EXCEEDED ITS AUTHORITY BY ORDERING A POLYGRAPH IN THIS CASE.

The Juvenile Justice Act does not specifically authorize a court to order polygraphy as a condition of a juvenile's supervision. *See* RCW 13.40 *generally*. The court's disposition order in this case authorized polygraphy as a means of monitoring compliance with treatment. CP 22.

The polygraph here was not ordered to monitor compliance with treatment. Accordingly, it was not justified under the disposition order.

The polygraph order must be vacated.

² If the state filed false reporting charges against A.W., Finch would have the right to be heard in that case. To date, the state has not filed such charges.

**IV. A.W. ADOPTS AND INCORPORATES THE ARGUMENTS SET FORTH
IN THE STATE'S REPLY BRIEF.**

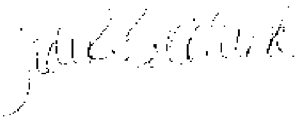
Pursuant to RAP 10.1, A.W. adopts and incorporates the arguments set forth in the state's Reply Brief.

CONCLUSION

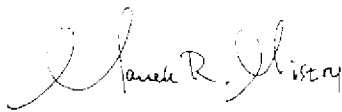
For all the reasons set forth in Appellant's Opening Brief, the September 9th polygraph order must be vacated.

Respectfully submitted on December 18, 2013,

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date, I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

A.W.
429 Spruce St E
Ilwaco, WA 98624

and:

Dwight Finch
1811 229th Place
Ocean Park, WA, 98640

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Wahkiakum County Prosecuting Attorney
jwetle@wapa-sep.wa.gov
pamloginsky@waprosecutors.org

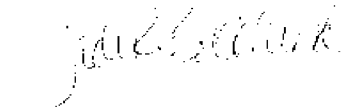
and:

John Hays, Attorney for Dwight Finch
jahays@3equitycourt.com

I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on December 18, 2013.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

December 18, 2013 - 1:18 PM

Transmittal Letter

Document Uploaded: 453371-Reply Brief.pdf

Case Name: AW and State v. Finch

Court of Appeals Case Number: 45337-1

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

☒ Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: **backlundmistry@gmail.com**

A copy of this document has been emailed to the following addresses:

jwetle@wapa-sep.wa.gov
pamloginsky@waprosecutors.org
jahays@3equitycourt.com